IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1834 OF 2006

Shri Sunil Daulat Matale ...Petitioner
V/s.
Sou.Vaishali Sunil Matale & Anr. ...Respondents

Mr.R.N. Gite for the Petitioner.
Mr.Vinod Shah for Respondent No.1.
Mr.Y.M. Nakhawa, APP for State.

CORAM : V.M. KANADE, J.

DATED : SEPTEMBER 13, 2007

P.C. :-

. The petitioner is challenging the judgment and order passed by the Additional Sessions Judge in Criminal Revision Application No.71/2005 dated 4th July, 2006 which confirmed the judgment and order passed by the JMFC, Niphad in Criminal Misc.Application No.52/2003 and thereby granted maintenance in favour of the respondent wife in the sum of Rs.1000/- per month from the date of the application. Brief facts are as under :-

2. The respondent is the legally wedded wife of the petitioner herein. It is the case of the respondent wife that after her marriage, the petitioner husband

started making various types of demands from her parents. Initially, he demanded a motorbike. Thereafter, he demanded an amount of Rs.50,000/- and when these demands were not fulfilled, the petitioner and his parents started harassing the respondent wife in various ways. The respondent was pregnant at that time and was carrying twins and as such, it was necessary to take care of health. However, even during the pregnancy, she was assaulted and as a result, there was premature delivery in which one child died and the other child died after few days after his birth. After the said episode, again the petitioner husband and his mother started demanding Rs.1,25,000/-. The respondent-wife’s parents gave Rs.50,000/-. Thereafter, again the petitioner husband and his mother threatened the respondent wife that if their demand was not fulfilled, she should give divorce to the petitioner husband. Hence, she was abused and was thereafter driven away from their house. Thereafter, she filed an application for maintenance under Section 125 in which it was alleged that the petitioner was earning Rs.2 to 3 lakhs per annum. In reply which is filed to the said

application, the petitioner raised an objection regarding the maintainability of the application at Lasalgaon and it was submitted that the respondent resided with her father at Nashik. It was submitted that therefore, the Court of the Judicial Magistrate of Lasalgaon did not have jurisdiction. The learned Magistrate after going through the evidence on record held that the court had jurisdiction to try the said application and further directed that the maintenance at the rate of Rs.1000/- per month should be paid by the husband from the date of the application i.e. 21.4.2003. This order was confirmed by the Sessions Court in the Criminal Revision Application which was filed by the petitioner herein.

3. The learned Counsel for the petitioner submitted that both the Courts had erred in holding that the Court of Lasalgaon had a jurisdiction to try and decide the application. He invited my attention to the provisions of Section 126. He submitted that under Section 126 sub-clause (1)(b), an application could be filed either at a place where husband resided or at the place where

wife resided. He submitted that in the present case, the wife resided permanently with her father at Nashik and therefore, the complaint was not maintainable at Lasalgaon court. He submitted even in the cross-examination, the respondent wife was unable to say the date from which she was residing at Lasalgaon. He further submitted that thereafter, civil application was filed by the respondent wife under Section 18 of the Hindu Adoption and Maintenance Act and in the said application, it was mentioned that the respondent wife was permanently residing with her father at Nashik. He invited my attention to the averment made in the said application by the respondent wife. He submitted that therefore, permanent residence of respondent being Nashik, Lasalgaon court did not have territorial jurisdiction to decide the said application. He submitted that both the Courts have committed an error of law which is apparent on the face of record. He relied on two judgments, one of the Kerla High Court and other of the Madras High Court i.e. the judgment of the Kerla High Court in the case of **Balkrishnan Nair, Petitioner v. Sulochana Amma, Respondent, reported in**

1962(i) Cri.L.J. 40 and the judgment of the Madras High Court in the case of **K. Mohan, Petitoner v. Balakanta Lakshmi, Respondent, reported in 1983 CRI.L.J. 1316.**

4. It is not possible to accept the submission made by the learned Counsel for the petitioner. The respondent no.1 has filed an application for maintenance at Lasalgaon Court. In her application, she has stated that she resided with her maternal uncle at the same time. Lasalgaon is situated at a distance of about 40-45 kms. from Nashik. In Section 126 subclause (1)(b), it is stated that the proceedings under Section 125 may be taken against any person in any district where the husband resides or where the wife resides. This provision has made valuable exception to general view regarding the cause of action in favour of the applicant. I have perused provisions of Section 16 to 20 CPC and Section 19 of the Hindu Marriage Act. Under both these Act, the applicant can file a suit or a petition either on the pretext that the marriage is solemnised or the cause of action has arisen or at the place where the wife resides or where the husband and

wife last resided together. However, in case of application under Section 125, the costs have to be paid and application can be filed by the wife at the place where she resides. The legislature in its wisdom has interpreted the said provision in order to enable that the wife who is not getting maintenance by her husband need not be burdened by filing an application for maintenance at the place of residence of her husband, keeping in view the physical and material hardship to be caused to the wife and the facts and circumstances of the case have to be taken into consideration. In the present case, the wife had to leave the matrimonial house on account of harassment by her husband and by her in-laws, as a result, there was miscarriage and she lost the two issues as a result of the premature delivery. It is possible that in order to overcome the mental trauma which must have been caused to her as a result of the ill-treatment and harassment by the in-laws, it is probable that the respondent wife was temporarily residing with her maternal uncle at Lasalgaon and as such, the said application for maintenance under Section 125 was filed at Lasalgaon. Both the Courts below have

recorded the concurrent finding of fact on this aspect of the maintainability of the application at Lasalgaon. The submission made by the learned Counsel for the petitioner that in her subsequent application under Section 18 of the Hindu Adoption and Maintenance Act, she has stated that she was residing at Nashik and therefore, the court at Lasalgaon did not have territorial jurisdiction to decide the case under Section 125, cannot be accepted. It is possible that subsequently after having faced the trauma, she started residing with her father at Nashik, that by itself does not mean that her earlier application which was filed at Lasalgaon was not maintainable on account of want of territorial jurisdiction. The contention raised by this submission which was vehemently urged by the petitioner, therefore, cannot be accepted. Similarly, ratio of the judgment on which reliance is placed by the petitioner also will not apply to the facts of the present case.

5. I have perused the order passed by the Sessions Court and the learned Magistrate, Lasalgaon. I see no infirmity in the said order. Both the Courts have held

that the petitioner husband has neglected to maintain his wife and that Lasalgaon court had jurisdiction to try and decide the said application under Section 125 of Cr.P.C. There is no reason, therefore, to interfere with the said order.

6. Hence, writ petition is dismissed. Rule is discharged. Under the circumstances, there shall be no order as to costs.

(V.M. KANADE, J.)